

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Counties Code is amended by changing Section 3-5010.8 as follows:

(55 ILCS 5/3-5010.8)

(This Section may contain text from a Public Act with a delayed effective date)

(Section scheduled to be repealed on January 1, 2022)

Sec. 3-5010.8. Mechanics lien demand and referral pilot program.

(a) Legislative findings. The General Assembly finds that expired mechanics liens on residential property, which cloud title to property, are a rapidly growing problem throughout the State. In order to address the increase in expired mechanics liens and, more specifically, those that have not been released by the lienholder, a recorder may establish a process to demand and refer mechanics liens that have been recorded but not litigated or released in accordance with the Mechanics Lien Act to an administrative law judge for resolution or demand that the lienholder commence suit or forfeit the lien.

(b) Definitions. As used in this Section:

"Demand to Commence Suit" means the written demand

specified in Section 34 of the Mechanics Lien Act.

"Mechanics lien" and "lien" are used interchangeably in this Section.

"Notice of Expired Mechanics Lien" means the notice a recorder gives to a property owner under subsection (d) informing the property owner of an expired lien.

"Notice of Referral" means the document referring a mechanics lien to a county's code hearing unit.

"Recording" and "filing" are used interchangeably in this Section.

"Referral" or "refer" means a recorder's referral of a mechanics lien to a county's code hearing unit to obtain a determination as to whether a recorded mechanics lien is valid.

"Residential property" means real property improved with not less than one nor more than 4 residential dwelling units; a residential condominium unit, including, but not limited to, the common elements allocated to the exclusive use of the condominium unit that form an integral part of the condominium unit and any parking unit or units specified by the declaration to be allocated to a specific residential condominium unit; or a single tract of agriculture real estate consisting of 40 acres or less that is improved with a single-family residence. If a declaration of condominium ownership provides for individually owned and transferable parking units, "residential property" does not include the parking unit of a specified residential condominium unit unless the parking unit

is included in the legal description of the property against which the mechanics lien is recorded.

(c) Establishment of a mechanics lien demand and referral process. After a public hearing, a recorder in a county with a code hearing unit may adopt rules establishing a mechanics lien demand and referral process for residential property. A recorder shall provide public notice 90 days before the public hearing. The notice shall include a statement of the recorder's intent to create a mechanics lien demand and referral process and shall be published in a newspaper of general circulation in the county and, if feasible, be posted on the recorder's website and at the recorder's office or offices.

(d) Notice of Expired Lien. If a recorder determines, after review by legal staff or counsel, that a mechanics lien recorded in the grantor's index or the grantee's index is an expired lien, the recorder shall serve a Notice of Expired Lien by certified mail to the last known address of the owner. The owner or legal representative of the owner of the residential property shall confirm in writing his or her belief that the lien is not involved in pending litigation and, if there is no pending litigation, as verified and confirmed by county court records, the owner may request that the recorder proceed with a referral or serve a Demand to Commence Suit.

For the purposes of this Section, a recorder shall determine if a lien is an expired lien. A lien is expired ~~if~~ ~~the lien is unenforced~~ (if a suit to enforce the lien has not

been commenced ~~by the lienholder~~ or a counterclaim has not been filed by the lienholder ~~within 2 years after the completion date of the contract as specified in the recorded mechanics lien. The 2-year period shall be increased to the extent that an automatic stay under Section 362(a) of the United States Bankruptcy Code stays a suit or counterclaim to foreclose the lien. If a work,~~ the completion of extra or additional work, or furnishing of extra or additional material under Section 9 of the Mechanics Lien Act; ~~if a completion date is not specified in the recorded lien, then the work completion date is shall be deemed the date of recording of the mechanics lien) and if an automatic stay under Section 362(a) of the United States Bankruptcy Code does not prohibit a suit or counterclaim to foreclose.~~

(e) Demand to Commence Suit. Upon receipt of an owner's confirmation that the lien is not involved in pending litigation and a request for the recorder to serve a Demand to Commence Suit, the recorder shall serve a Demand to Commence Suit on the lienholder of the expired lien as provided in Section 34 of the Mechanics Lien Act. A recorder may request that the Secretary of State assist in providing registered agent information or obtain information from the Secretary of State's registered business database when the recorder seeks to serve a Demand to Commence suit on the lienholder. Upon request, the Secretary of State, or his or her designee, shall provide the last known address or registered agent information

for a lienholder who is incorporated or doing business in the State. The recorder must record a copy of the Demand to Commence suit in the grantor's index or the grantee's index identifying the mechanics lien and include the corresponding document number and the date of demand. The recorder may, at his or her discretion, notify the Secretary of State regarding a Demand to Commence suit determined to involve a company, corporation, or business registered with that office.

When the lienholder commences a suit or files an answer within 30 days or the lienholder records a release of lien with the county recorder as required by subsection (a) of Section 34 of the Mechanics Lien Act, then the demand and referral process is completed for the recorder for that property. If service under this Section is responded to consistent with Section 34 of the Mechanics Lien Act, the recorder may not proceed under subsection (f). If no response is received consistent with Section 34 of the Mechanics Lien Act, the recorder may proceed under subsection (f).

(f) Referral. Upon receipt of an owner's confirmation that the lien is not involved in pending litigation and a request for the recorder to proceed with a referral, the recorder shall: (i) file the Notice of Referral with the county's code hearing unit; (ii) identify and notify the lienholder by telephone, if available, of the referral and send a copy of the Notice of Referral by certified mail to the lienholder using information included in the recorded mechanics lien or the last

known address or registered agent received from the Secretary of State or obtained from the Secretary of State's registered business database; (iii) send a copy of the Notice of Referral by mail to the physical address of the property owner associated with the lien; and (iv) record a copy of the Notice of Referral in the grantor's index or the grantee's index identifying the mechanics lien and include the corresponding document number. The Notice of Referral shall clearly identify the person, persons, or entity believed to be the owner, assignee, successor, or beneficiary of the lien. The recorder may, at his or her discretion, notify the Secretary of State regarding a referral determined to involve a company, corporation, or business registered with that office.

No earlier than 30 business days after the date the lienholder is required to respond to a Demand to Commence Suit under Section 34 of the Mechanics Lien Act, the code hearing unit shall schedule a hearing to occur at least 30 days after sending notice of the date of hearing. Notice of the hearing shall be provided by the county recorder, by and through his or her representative, to the filer, or the party represented by the filer, of the expired lien, the legal representative of the recorder of deeds who referred the case, and the last owner of record, as identified in the Notice of Referral.

If the recorder shows by clear and convincing evidence that the lien in question is an expired lien, the administrative law judge shall rule the lien is forfeited under Section 34.5 of

the Mechanics Lien Act and that the lien no longer affects the chain of title of the property in any way. The judgment shall be forwarded to all parties identified in this subsection. Upon receiving judgment of a forfeited lien, the recorder shall, within 5 business days, record a copy of the judgment in the grantor's index or the grantee's index.

If the administrative law judge finds the lien is not expired, the recorder shall, no later than 5 business days after receiving notice of the decision of the administrative law judge, record a copy of the judgment in the grantor's index or the grantee's index.

A decision by an administrative law judge is reviewable under the Administrative Review Law, and nothing in this Section precludes a property owner or lienholder from proceeding with a civil action to resolve questions concerning a mechanics lien.

A lienholder or property owner may remove the action from the code hearing unit to the circuit court as provided in subsection (i).

(g) Final administrative decision. The recorder's decision to refer a mechanics lien or serve a Demand to Commence Suit is a final administrative decision that is subject to review under the Administrative Review Law by the circuit court of the county where the real property is located. The standard of review by the circuit court shall be consistent with the Administrative Review Law.

(h) Liability. A recorder and his or her employees or agents are not subject to personal liability by reason of any error or omission in the performance of any duty under this Section, except in the case of willful or wanton conduct. The recorder and his or her employees or agents are not liable for the decision to refer a lien or serve a Demand to Commence Suit, or failure to refer or serve a Demand to Commence Suit, of a lien under this Section.

(i) Private actions; use of demand and referral process. Nothing in this Section precludes a private right of action by any party with an interest in the property affected by the mechanics lien or a decision by the code hearing unit. Nothing in this Section requires a person or entity who may have a mechanics lien recorded against his or her property to use the mechanics lien demand and referral process created by this Section.

A lienholder or property owner may remove a matter in the referral process to the circuit court at any time prior to the final decision of the administrative law judge by delivering a certified notice of the suit filed in the circuit court to the administrative law judge. Upon receipt of the certified notice, the administrative law judge shall dismiss the matter without prejudice. If the matter is dismissed due to removal, then the demand and referral process is completed for the recorder for that property. If the circuit court dismisses the removed matter without deciding on whether the lien is expired and

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without prejudice, the recorder may reinstitute the demand and referral process under subsection (d).

(j) Repeal. This Section is repealed on January 1, 2022.

(Source: P.A. 100-1061, eff. 1-1-19.)

Section 99. Effective date. This Act takes effect upon becoming law.